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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,109	05/31/2006	Wolfgang von Deyn	13779-67	5188
45473 7590 05/24/2010 BRINKS, HOFER, GILSON & LIONE P.O. BOX 1340 MORRISVILLE, NC 27560				
EXAMINER HOLLOMAN, NANNETTE				
ART UNIT		PAPER NUMBER		
1612				
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05/24/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,109

Applicant(s)

VON DEYN ET AL.

Examiner

NANNETTE HOLLOMAN

Art Unit

1612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 18-22 and 27-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 18-22 and 27-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Applicants' arguments, filed April 14, 2010, have been fully considered. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1) Claims 15, 18-22 and 30-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furch et al. (EP 0604798) in view of Ragusa et al. (Entomologia Hellenica, Vol. 12, 1994-1998, pp. 55-64).

Furch et al. disclose a method for the control of insect or acarid pests which comprises contacting said pests or their food, supply, habitat or breeding grounds with a pesticidally effective amount of a compound having the structure of (I), which meets the claimed compound (Reference claim 1). Furch et al. further disclose said compounds are also effective for protecting growing or harvested crops from attack and infestation by such pests (p. 6, lines 20-23), which is being understood to meet the limitation of "non-living organic materials". Furch et al. disclose activity against Acarina, which is a subclass and has as superorder of Parasitiformes, with examples of activity against mites. Furch et al. differs from the instant claims insofar as it does not disclose the specifically claimed orders or superorders.

Ragusa et al. disclose mites of the superorder Parasitiformes, which have been found on agricultural crops and are considered predators (p. 55, column 1). Ragusa et al. differs from the instant claims insofar as it does not disclose a method for controlling non-crop pests.

It would have been obvious to have used the method and pesticide of Furch to treat the mite of Parasitiformes of Ragusa motivated by the desire to use a pesticide that has activity against mites of the subclass Acarina that have been found in agricultural crops.

2) Claims 15, 18-22 and 27-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yanagi et al. (US Patent No. 5,378,726) in view of Furch et al. (EP 0604798).

Yanagi et al. disclose pesticidal compositions that have low toxicity to humans and animals (column 1, lines 39-43). Yanagi et al. disclose the composition may be used in the form of a poison bait and combined with other pesticides, i.e. acaricides, to provide a more excellent pesticidal effect (column 9, lines 11 and 49-65). Yanagi et al. disclose applying the pesticide to pest of Hemiptera and Hymenoptera in an amount depending on conditions of human or animal suffering from parasitic disease (column 10, line 40 to column 11, line 1). Yanagi et al. differs from the instant claims insofar as it does not disclose a compound of formula I.

Furch et al. is discussed above and discloses compositions that are acaricides. The reference differs from the instant claims insofar as it does not disclose the specifically claimed orders.

Generally, it is *prima facie* obvious to combine two compositions, each of which is taught by the prior art to be useful for same purpose, in order to form a third composition to be used for the very same purpose. The idea for combining them flows

logically from their having been individually taught in the prior art. See MPEP 2144.06. Therefore, it would be obvious to combine the pesticide of Yanagi with the pesticide of Furch to form a third pesticidal composition. Furthermore, it would be obvious to one of ordinary skill to combine the acaricide formulation of Furch et al. with the pesticide of Yangi et al. motivated by the desire to provide a more excellent pesticidal effect.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANNETTE HOLLOMAN whose telephone number is (571) 270-5231. The examiner can normally be reached on Mon-Fri 800am-500pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on 571-272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. H./
Examiner, Art Unit 1612

/Frederick Krass/
Supervisory Patent Examiner, Art Unit 1612